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FARMER'S GUIDE FOR  
CONTRACTS WITH NA  
NATIVE SERVANTS, UNDER  
ACT 40, 1894, NATAL,  
NATIVE TENANTS AND  
SQUATTERS

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# FARMER'S GUIDE

FOR

Contracts with Native Servants,

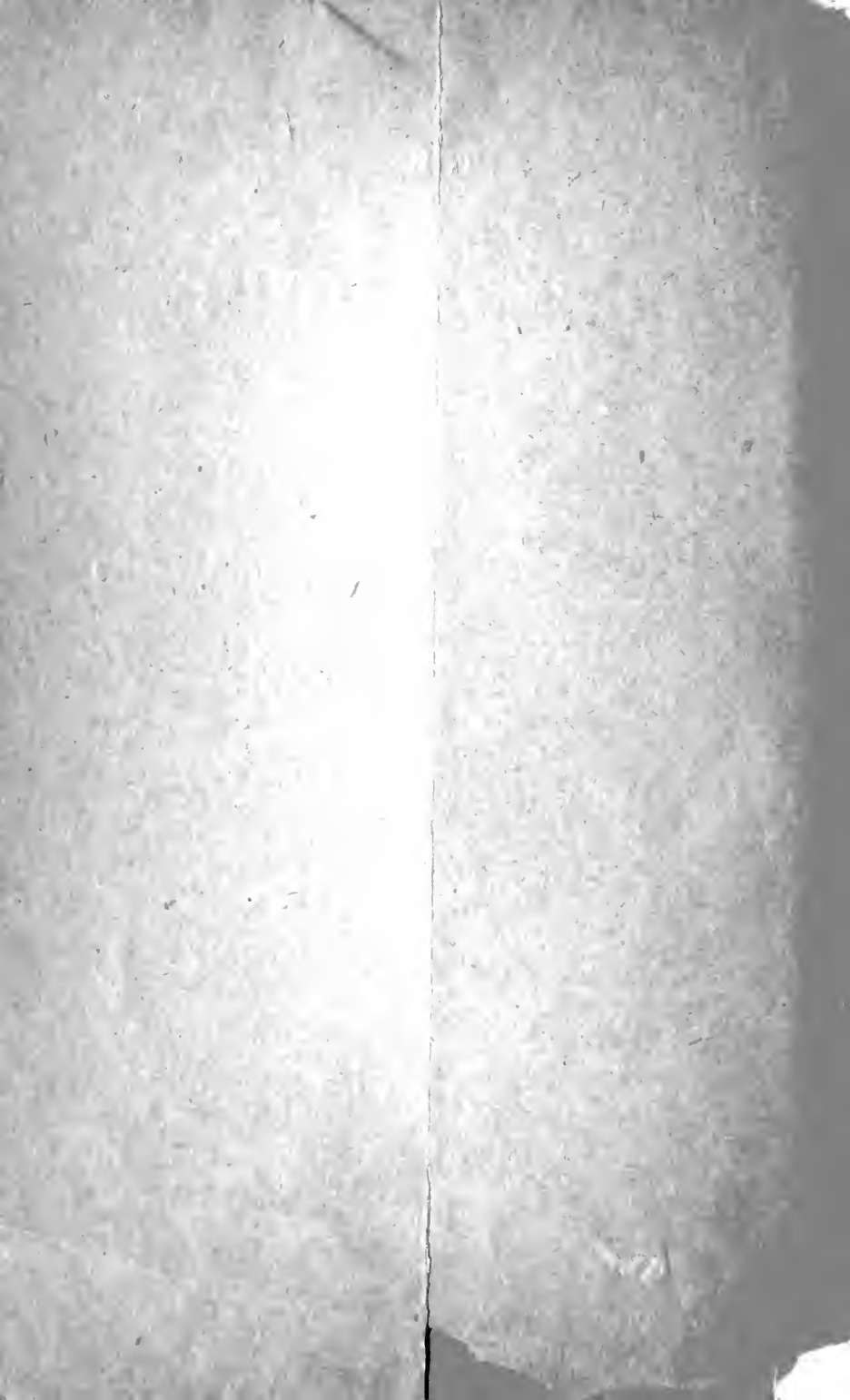
UNDER ACT 40, 1894, NATAL,

Native Tenants and Squatters.



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## INTRODUCTION.

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This book has been compiled mainly for the benefit of the farmer, and the author sincerely trusts it will prove to be of use to those who are not quite certain whether their contracts are in accordance with the Master and Servants (Native) Act 40 of 1894.

It does not purport to deal with all contracts between farmers and their Native labourers, but mainly with those completed in terms of Act 40, 1894.

The Native Squatters and Pass Laws have also been briefly dealt with.

The compiler makes no claim to infallibility, but the greatest care has been exercised; so that, where no authority is quoted in support of any argument, few, if any, will be found to differ from the opinions expressed.

Chapter I. of Act 40, 1894, on the formation of Contracts, and other important sections of the Act appear at the end of the book.

A. B. TOD.

Ladysmith, Natal,  
1st January, 1921.

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# Contracts with Native Servants,

under Act 40, 1894, Natal.

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Contracts of Service between Farmers and Natives may be divided into two great and distinctive classes:—

1. Contracts under Act 40, 1894.
2. Civil Contracts.

It is very important to bear in mind the distinction between these two classes, and particularly the strikingly different procedure adopted in enforcing each of them. It must also be borne in mind that the same agreement cannot be both a Civil Contract and at the same time a contract in accordance with Act 40, 1894. It is either one or the other, and neither party is entitled to proceed both civilly and quasi-criminally under the same contract. Therefore

UNDER I. (*i.e.*, those contracts completed in accordance with Act 40, 1894) the aid of the Court and of the Police may be, and is usually, resorted to in order to effect the arrest of a native who has deserted from the service of his master, or has in any other way committed an offence under the Act. In other words the Criminal procedure is put into operation to effect the arrest and punishment of the native. Another important factor, and one that must not be forgotten, is that a Contract in accordance with the Act can be enforced, *i.e.*, the native can be compelled to **RENDER THE LABOUR** for the stipulated period agreed upon.

UNDER II., *i.e.*, contracts which have not been completed in accordance with Act 40 of 1894 and which are valid otherwise are usually called Civil Contracts. Under such Civil Contracts should a native desert the farmer cannot under any circumstances invoke the aid of the Criminal Law or of the Police to effect the arrest of the native, he having merely a claim for damages obtainable by the ordinary civil action. Bear in mind also that labour under a Civil Contract **CANNOT BE ENFORCED** even though the native may have agreed to work for a stipulated period, the farmer having merely an action for damages.

Needless to say, the majority of contracts entered into between farmers and natives are made in compliance with Act 40, 1894, but this point cannot be taken for granted by any Magistrate, therefore the burden of proving that the contract is one within the meaning of the Act lies upon the farmer, and it is for him to prove that the native is employed as a servant within the meaning of Section 2, Act 40 of 1894.

*Gengana v. Makkink*, 54 N.L.R., 504. Accused had been convicted of contravening Sub-section (2) of Section 26 of Act 40, 1894, by absenting himself from his master's employ. The Court quashed the conviction on the grounds that it had not been proved (1) that the accused was a "Native," and (2) that he was employed as stated in Section 2 of the Act.

In *Siptele and another v. Uys*, N.L.R., 1914, it was stated that the relation of master and servant must be proved, and in order to obtain a conviction under s.s. 6 of Section 26 of Act 40, 1894, it is necessary to show *in limine* that the persons charged are servants in the sense of the Act.

*Sibisi v. Bruyns*. Justice Circular No. 65, December, 1913. Accused, a native, charged under Section 28 of Act 40, 1894, pleaded guilty, and without any evidence to prove the crime, was convicted and sentenced. The Court quashed the conviction.

*Mbala v. Muller*. Justice Circular No. 258, May, 1918. In this case the Judge-President, Dove Wilson, *inter alia*, said:—"Magistrates and Justices of the Peace will, however, be well advised to inquire into the nature of the contract, and, if it is an oral one, to inquire further whether it is one which, in terms of Section 6 of the Act, would constitute the relationship of master and servant at the time of the offence charged."

*Zulu v. Nel*. Justice Case Circular No. 315, June, 1918. The appellant was charged with desertion from the service of his master, N. But N. was only the employee of the master with whom the contract of service was said to have been entered into, *viz.*, L. It was therefore not possible for the appellant to desert from the service of N., although he might desert from the service of L. The conviction was quashed.

The farmer will readily understand that his contract must be strictly in compliance with the Act, and it is upon him to prove it is such, before he can expect a conviction against his servant. He must also remember that under a Civil Contract he cannot effect the arrest of the native, nor enforce the labour under such contract, his remedy being merely civil damages.

It might be argued, however, that the intention of the parties was to make a contract under Act 40, 1894, but irrespective of this intention, if the parties have made such a contract which cannot be brought under the Act (*e.g.*, a verbal agreement to render more than one year's labour) then such a contract, if valid otherwise must be treated as an ordinary Civil Contract, and any action under Act 40, 1894, would fall to the ground.

#### A NATIVE LABOURER DESIRES TO ENTER INTO A CONTRACT OF SERVICE. WHAT MUST BE DONE TO MAKE SUCH A CONTRACT BINDING?

1st. The native must have an Identification Pass, *vide* Section 2, Act 3, 1904, which reads:—"If any Master employs a Native Servant without such servant having produced his Identification



Pass he shall be guilty of a contravention of this Act." An Identification Pass can be obtained at any Magistracy free of charge if the native has never possessed a Pass, and on payment of 1s. if the application is one for a renewal. A farmer, however, employing a native resident on his farm may do so without it being necessary for such a native to be in possession of a Pass, *vide* Section 3, Act 49, 1901, which reads: "This Act is not to apply to natives rendering service to a landlord in lieu of rent, when such service is rendered upon the farm on which the natives live, nor to any other service performed on the land on which they live."

2nd. When entering into the contract take care that there is no doubt or difference on either side relating to terms of service, *e.g.*, date of commencement, period of service, rate of wages, etc. If the contract is for a period not exceeding one year then such an agreement can be made verbally, there being no occasion for such a contract to be in writing, but service under such a contract MUST commence within thirty days, *vide* Section 6, Act 40, 1894. If on the other hand the term of service agreed upon is not to commence within thirty days of agreement, or the period for which the native is to be engaged exceeds a year, then in order for such an agreement to be binding it must be in writing in the form of Schedule A. (see back), *vide* Section 7, Act 40, 1894. This form, which is obtainable at any Magistrate's Office, is supplied free of charge. An agreement to render labour for more than three years, whether in writing or otherwise, is not valid under Act 40, 1894, and would hold good only as a civil contract.

It has been contended that under an attested contract, *i.e.*, one signed before a Magistrate or Justice of the Peace under Section 7, service has to commence within thirty days of the agreement. This is incorrect. The exception in the section refers both to the period of service and date of commencement thereof.

3rd. Enter particulars of agreement in Labour Book and at the same time fill in particulars of the native's Identification Pass in the space allotted for that purpose. Section 12, Act 49, 1901, reads:—"Every Master employing a native other than a registered Togat Labourer shall keep a Labour Book in which he shall copy the Identification Pass of every native whom he employs. The Master shall on no pretext keep the servant's Identification Pass unless with the consent of the native." The Labour Book is obtainable at any Magistrate's Office for the small sum of 6d., and if properly kept will be found to be of great assistance, especially at the trial of any native whom the farmer has had occasion to prosecute. The fact of not keeping a Labour Book will not invalidate any contract of service under Act 40, 1894, but will render the farmer liable to prosecution for not complying with the Act of 49, 1901.

Labour Books need not be kept in connection with natives rendering service in lieu of rent on the farm on which they reside.

There are many ways of entering into contracts of service, but as this book is not concerned with the formation of Civil Contracts it will deal only with those under the Master and Servants Act 40, 1894, and the reader should carefully note the following classes:—

1. VERBAL CONTRACTS, *vide* Section 6, which may be entered into legally, provided the term of service agreed upon does not exceed one year in duration and commences within thirty days of agreement. Where no period has been stipulated the contract is presumed to be a monthly one, *vide* Section 5, but proof would be required as to (a) date of commencement, (b) rate of wages, etc.

*Maham v. McKenzie*, Justice Case Circular No. 149, February, 1913. Accused had been permitted to reside on complainant's land on condition, *inter alia*, that he must render services for six months in the year. He borrowed money from complainant to the extent of about £40 on the condition verbally agreed upon that he had to work it off at the rate of 15s. per month. Held, that whether he was to be regarded as a tenant or not, as it would have taken more than a year to work off the loan, the contract was illegal under Section 6 of Act 40 of 1894, as it had not been in writing.

2. UNATTESTED WRITTEN CONTRACTS may be entered into provided period of service does not exceed one year and service commences within thirty days of the agreement, *vide* Section 7.

3. WRITTEN ATTESTED CONTRACTS, *vide* Sections 7 and 8, which are requisite for any contract where the service is not to commence within thirty days of agreement, or where duration of contract exceeds one year but does not exceed more than three years. This written contract must be made in the prescribed form (*vide* Schedule A. at back hereof), and must be signed by both parties in the presence of a Magistrate or Justice of the Peace. It is usual to complete such contracts in triplicate, the master and the native each retaining a copy and the Magistrate the third copy for record purposes. The forms for such written attested contracts may be obtained at any Magistrate's Office free of charge. The Written Contract should be produced in Court when the native is being prosecuted for any offence under the Act.

4. WIFE AND CHILDREN. The reader is referred to Section 19 (at end of book) which provides that the wife, and children above the age of 16 years, must sign the contract in addition to the husband. It should be also noticed that any contract for the service of a child is restricted to the period the father or guardian is in service, and ends when the child attains the age of 16 years.

5. A KRAAL HEAD cannot bind all the adult male inmates of a kraal to render labour without their consent, and should he do so and the labour be not rendered, then the farmer would have

merely a civil claim for damages against such Kraal Head. The <sup>best</sup> ~~only~~ way of binding such inmates of a kraal would be by an attested contract duly signed by all the parties before a Magistrate or Justice of the Peace.

. . . . .

To ascertain whether a contract is in compliance with the Act several important matters must be considered, commencing with the definition of the word "a month."

A MONTH under Section 2, Act 40, 1894, has been defined as "a period of thirty days." Observe and remember that the month in contracts under Act 40, 1894, is not the ordinary calendar month, but a period of thirty (30) days, and if it were proved that the native was employed by the calendar month this small technical but vital point would at once decide the case in favour of the native. This definition then that a "month is a period of thirty days" should always be kept in view when entering into contracts with natives, and if the Labour Book is kept (as is required by Act 49, 1901) one cannot help but be reminded of this fact because it is necessary to fill in at the commencement of the contract the date when each and every month will terminate. Example:—A month's contract under Act 40, 1894, commencing on the 1st January, would terminate on the 30th and not on the 31st of that month, and again a four months' contract commencing on the 1st July would terminate on the 28th, and not on the 31st October, reckoning thirty days to the month. The thirty days must be continuous and not reckoned by odd and broken days, and as to this point the reader is referred to the remarks made under the Ticket System.

**A CONTRACT MUST BE FOR A DEFINITE PERIOD.** There must be some binding agreement. The service under a contract must commence on a certain date and terminate on a certain date.

**COMMENCEMENT OF CONTRACT.** With regard to its commencement a verbal or unattested written contract must commence within thirty days of its making. If a farmer agrees with a native that the latter is to commence working thirty-one days or more from date, then such a contract must be attested, *i.e.*, signed before a Magistrate or Justice of the Peace in terms of Section 7.

**TERMINATION OF CONTRACT.** If all the essentials of the Act have been complied with but the term of duration of the contract has not been agreed upon, then such a contract is considered a monthly one, *vide* Section 5, terminating with one month's notice on either side.

Many farmers are under the impression that the date of termination is immaterial and need not be filled in in a Written Contract; and in fact many evade filling in the date of termination

under the mistaken belief that by so doing they can compel the native at any time after the date the contract should have been completed to make up wrongful absences. There is no provision in the Act allowing a farmer to tack on any days the native has been wrongfully absent without coming to Court, and herein to a certain extent the Act is wanting, but if it were allowed without restriction then we would have a repetition of the Ticket System. In the majority of cases a native does not dispute his absences and makes them up without any trouble. Special provision, however, under Section 35 has been made whereby the periods spent in prison for punishment of offences under the Act are automatically added to the date of termination of the contract. Such section reads:—  
 “The number of days for which a servant may be absent from his master’s service by reason of desertion or unlawful absence, or of imprisonment for an offence under this Act, or during which he may be employed in going to, being at, and returning from a Magistracy in connection with an offence proved against him under this Act, shall be deemed to be added to the term of service originally agreed to, and the term of service shall be incomplete until the expiry of all such added days.”

It is stated in the Act (Section 9) that Written Contracts should be as near as possible in the prescribed form (Schedule A.), and on reference to this form it will be observed that a space has been specially allotted for the date of termination, and therefore it should, and can, be easily filled in. It appears to be a growing, though absolutely incorrect, practice, not to fill in the date of termination of a contract but to delete such words as are applicable and insert terminating on the completion of the last working day. To take an example, in an 18 months’ contract the farmer, instead of filling in the date, will insert terminating on the 540th working day. It will be readily admitted that if this practice were permitted and upheld under Act 40, 1894, a verbal contract might last longer than a year and a written attested contract longer than three years, thereby rendering the Act futile.

The above method of completing attested contracts is in vogue in many Districts, and is particularly made use of with natives employed under the Ticket System, which are, strictly speaking, not contracts within the meaning of Act 40, 1894, and under which the farmer has merely a civil action and no right whatsoever to resort to Act 40, 1894, to effect the arrest and punishment of a native who has deserted from his services.

### TICKET SYSTEM.

This system is mostly used by farmers who employ many natives. To those who are not aware of it a short explanation is necessary, and an example will readily explain how such contracts are made.

X., a farmer, engages N., a native, to work for him for six months. Each month is represented by a card on which there are

thirty squares, and for each day worked one square is obliterated. When the first card of thirty days has been completed the native is said to have worked his first month, and on the completion of the sixth ticket the contract is said to have been completed, even though it may have taken the native eighteen months to complete such a contract. Sundays are only reckoned if the native works regularly.

On the face of it nothing appears to be wrong in adopting this procedure, because it is possible that the native may work continuously and complete the contract within the prescribed period, but the date of termination is not mentioned for the simple reason that **THE AGREEMENT IS NOT ONE TO RENDER SERVICE WITHIN A STATED TIME, BUT TO RENDER SO MANY DAYS' WORK IRRESPECTIVE OF THE TIME TAKEN TO WORK OFF THE NUMBER OF DAYS AGREED UPON**, and such an agreement cannot and will not hold under Act 40, 1894, for the simple reason that it covers an indefinite period and defeats at once the objects of Sections 6 and 8 of the Act.

The reader must understand that in this book we are dealing with contracts in compliance with the Act, and although many find the Ticket System better adapted for their own use, they cannot enforce such Ticket System Contracts under Act 40, 1894, nor have they a right to set the criminal law into motion to effect the arrest of a native deserting under such contracts. The only remedy they have is a civil one for damages, unless they have made their contract in compliance with Act 15, 1911.

A case under the Ticket System on all fours with this example was heard and dismissed by a Judicial Officer.

X., a farmer, engaged N., a native, to work for him for six months, service commencing on the 1st September. In the following July N. was brought before the Court and charged with desertion on or about the 10th of the previous month (June). The Magistrate at once asked the complainant how he could expect a conviction for desertion after the date of the termination of the contract. It then transpired that the native worked three days in September, a few in October, the same in November, and long after the date of the termination he had completed only three weeks in all, and according to the complainant the native was bound and could work on indefinitely until he had put in the requisite number of days, without it being necessary to punish the native and extend the contract under Section 35.

*Nomatshana v. Gibson*, Justice Case Circular No. 148, February, 1913. Accused had been convicted of deserting her master's service. The master gave evidence that she had to work twelve months in terms of a contract put in, from which it appeared that she and other natives had to supply labour in consideration of occupation of land by them as tenants, but it appeared that the contract expired in June, 1912, and the desertion took place in September, 1912. No subsequent extension of the contract was proved. Conviction quashed.

In the case just quoted the contract was evidently not extended in terms of Section 35, presumably because the complainant did not prosecute the native, or, on the other hand, it might have been an adoption of the Ticket System on a mild scale.

Those who use the Ticket System are not in a position to complete their Labour Books until the contract has been completed, whereas they are required to fill in, at the commencement of the agreement, the date of termination of each and every month. Had the word in the Labour Book been "ended" then naturally the argument as to filling in the date at the commencement of the contract would not hold, but it distinctly says "ends," and, moreover, on referring to Section 35, *unlawful* absences are added to the term originally agreed upon, and not at the end of every month.

The following is a good illustration of a Labour Book kept under the Ticket System, showing how a six months' contract commencing on the 1st January is stretched into a much longer period:—

- 1st month ends 30th January.
- 2nd month ends 10th March.
- 3rd month ends 20th April.
- 4th month ends 1st June.
- 5th month ends 29th July.
- 6th month ends 30th September.

It will be readily admitted that if the month is reckoned by the working day (made up by odd and broken days) once the contract is entered upon, the Court, the farmer, and the native have no idea when the contract will terminate or even when the first month will end.

Much could be written for and against the Ticket System, but sufficient to say it is not a contract under Act 40, 1894, and in proof thereof the reader is referred to the following cases:—

*Kristan v. Durban Navigation Collieries*, 34 N.L.R., 56. In this case an Indian had been engaged at a coal mine to work under a system whereby he was only paid after completing thirty working days, which might cover a period longer than a calendar month, *Held*, that such an agreement could not be considered a monthly contract within the meaning of Section 2, Ordinance 2 of 1850, and therefore the conviction for desertion was quashed.

The above case was decided under Ordinance 2 of 1850, and unfortunately there is not a direct ruling on this point under Act 40, 1894, but the reader will observe that Section 2 of Ordinance 2 of 1850 and Section 5 of Act 40, 1894, are worded precisely the same, but there is this differentiation in the two laws, namely, that under Ordinance 2, 1850, "a month" means a "calendar month," whilst under Act 40, 1894, "a month" means a "period of thirty days." The word "period" has been judicially defined as a time that runs continuously (*vide* Stroud's Judicial Dictionary), so that a period of thirty days means thirty continuous days. Therefore if the contract is, as is contemplated under the Ticket System, not

for a period of thirty continuous days, the native cannot, following the decision in Kristan's case, be said to be a monthly servant within the meaning of Section 5 of the Act.

There is, however, nothing to prevent the master and servant contracting apart from the provisions of Act 40, 1894, but if either party seeks a remedy under the Act his first duty would be to show that the Act applied to his particular case, and herein the farmer or the native would fail if the contract was one under the Ticket System.

Consider also *Gengana v. Makkink*, 34 N.L.R., 504. In order to obtain a conviction under Act 40, 1894, against a native for desertion it must be proved that the accused is a native and that he is employed as a servant within the meaning of Section 2 of the Act. Where such proof was wanting the conviction was quashed.

Again in *Central S.A. Railways v. Cooke* (1904 T.S., 531) it was held that the mere fact that the wages are paid at the end of every month will not necessarily make the contract a monthly one, where it appears that the servant is employed at a daily wage, and that the amount paid to him every month was calculated on the basis of the actual number of days worked by him.

In *R. v. Andries* and *R. v. Pobane*, 9 S.C., 18, and 1908 E.D.C., heard under the Cape Act, which is similarly worded to our Act of 1840, it was held that an indefinite hiring by the day, though the wages are paid weekly or monthly, is not a contract, nor the employee a "servant" within the meaning of the Act.

The above cited cases from the various Provinces should at once convince the reader of the interpretation which would be placed upon the first contract appealed under Act 40, 1894, and made under the Ticket System.

It might be added that the Ticket System Contracts would hold under Act 15, 1911, if made and attested in compliance with that Act, and should the native desert or commit any other offence he would be charged under Section 14 (1) thereof, *provided he is not an agricultural labourer.*

#### ADVANCES.

This is the root of all trouble, and in contracts under Act 40, 1894, legislation has to a certain extent limited the amount of advances to natives, but how far does the farmer abide by it?

For instance a farmer cannot advance more to a native than it is possible for him to work off in three years under one contract; if he does so he has merely a civil claim. Then again in a verbal or unattested written contract a farmer cannot advance more than a year's wages to a native. If he does he has merely a civil claim for the amount advanced, and cannot compel the native to render labour for the stipulated period.

A. (an European) engages N. (a native) to work for him under a verbal contract for six months from the 1st January to the 29th June, the native servant having received an advance of £6, representing wages at the rate of £1 per month. On the 1st

March, whilst the contract is still in existence, N. applies for a further loan of £9. For the latter advance A. has only a civil claim and cannot regard it as a verbal contract under Act 40, 1894, to take effect on the 30th June, because it is impossible for the native to commence working within the stipulated period (*i.e.*, thirty days from the date of the second advance) for the simple reason that he has not completed his first contract, which will terminate on the 29th June, up to which date he has been paid.

It will be seen that as a rule a second advance cannot be made to a native, but the difficulty may be overcome by making a fresh verbal or written contract, duly attested before a Magistrate or Justice of the Peace, at the date of the second or any further advance. If a fresh contract were not made then the second and further advances could not be brought by a verbal contract within the scope of Act 40, 1894, unless, of course, such advances were made within thirty days of the termination of the original contract. Take, for instance, the above example. At the date of the second advance N. would still owe A. £4 of the first advance, making in all a total of £13, which if worked off at the rate of £1 per month will represent more than a year's labour due, consequently the farmer, in order to secure himself, completes a Written Contract binding the native for 13 months from date of the second advance, or on the other hand he could at a later date complete a Written Contract (duly attested) binding the native as from the 29th June, or later, to work off the second loan.

The safest course then to adopt when making further advances to a native is to cancel the old contract and make a new one which, if binding for more than twelve months, must be duly attested before the Magistrate or Justice of the Peace.

In *Zubula v. Meyer*, the Court expressed a doubt as to whether the accused could be charged with desertion, having regard to the fact that the alleged desertion appeared to have taken place after the termination of the contract of service, and whilst accused was working off some advances made during the subsistence of the contract and for which another native stood security.

Second and further advances need not be made, although many a farmer will argue that if he does not give a second and further advance to a native the latter will go to his neighbour, secure the cash, and then come and tender him the balance due. Well, such balance need not be accepted if the farmer, when he advanced the original amount, made the native clearly understand that he was receiving his wages in advance for a stipulated period and not a mere loan which may be repaid at any time. If then the original amount were for wages the neighbour would find that he had lent money to a native without being able at once to secure his labour.

#### NOTICE.

What notice is required to terminate a contract?

In a Written or Verbal Contract for a stated and definite



period no notice is required, the contract expiring automatically when the service agreed upon has been rendered. Some farmers are under the impression, and others insist, that notice must be given by a native even though the term of service has been agreed upon. This is incorrect and cannot be maintained, *e.g.*, if a native has engaged himself to work for six months there is no occasion for him to give notice at the end of the fifth month that he is leaving at the date of the expiration of the contract.

As to ordinary monthly contracts, here either party must give a month's notice to terminate the contract, such notice being 30 days.

#### CANCELLATION OF CONTRACT.

If either party desires a contract to be cancelled and has good grounds for making such a request such a contract, verbal or written, may be cancelled by the Magistrate in terms of Section 51, Act 40, 1894. If both parties mutually agree to cancellation of contract then there would be no occasion to appear before the Magistrate.

#### COMPLAINTS TO THE POLICE AND COST OF APPREHENSION.

Any complaint against a servant must be lodged with the Police within three months from the date on which the farmer first became aware of the offence, otherwise all right of redress is lost. *vide* Section 38.

If a native is arrested within the District in which he is working no expenses will be incurred in connection with his arrest, but if arrested elsewhere then an amount to cover train fares, food, etc., to destination will have to be met by the farmer, which sum will in due course be refunded by the native out of his wages if he is convicted of the offence.

#### WITHHOLDING OF WAGES.

It is an offence to withhold wages even though one may be aware that the native intends deserting service. Section 50.

#### COURT MESSENGERS.

These Native Messengers are attached to the various Magistrates' Courts, not for the use of the general public, but primarily for the purpose of serving civil processes. A few farmers, instead of reporting an absentee to the Police, on their own engage a Court Messenger, paying him anything from 10s. to £1 to bring in the absentee. The fees paid to the Messenger are then debited as wages in advance to the native, and he is expected and forced to work off such fees. To say the least of it this practice is wrong, and the farmer has no claim upon the native for such fees. His

remedy is to report the matter to the Police, who will duly bring in the native, in most cases without any cost to either party.

## CONTRACTS BETWEEN LANDLORD AND TENANT.

Having now dealt with Contracts under Act 40, 1894, we shall now proceed to deal with those falling under the above heading.

Section 4, Act 3, 1904, reads: "Notwithstanding the provisions of Section 3 of Act No. 49, 1901, in cases where a Native tenant has agreed with his Landlord to render service to the Landlord, it shall be lawful for either party to require the other, on reasonable notice, to attend, and he shall be bound to attend, before a Magistrate, and when the Magistrate shall have ascertained the agreement between the parties, he shall destroy any existing Identification Pass and issue to the Native a new Identification Pass, endorsing on such new Pass the period during which the Native is to render service to the Landlord, and during such period no person other than the Landlord shall be entitled to hire the services of such Native. The appearance of the Landlord before the Magistrate may be by himself or by an Agent, or by delivery of the Landlord's statement in writing of the terms and period on and during which the Native has agreed to render service. It shall be the duty of the Magistrate to satisfy himself that the Native agrees to the terms. Any notice under this section by a Landlord to a Native shall not be taken to have been effectually given unless personally served or unless left at the kraal of such Native at a time when the Native is on the farm where his kraal is situated.

Whenever a Native shall cease to reside upon private land he shall, on giving satisfactory proof and on surrendering his endorsed Pass to a Magistrate, be entitled to obtain a new Identification Pass, and whenever a Native shall move from the land of one private owner to another the Native appearing before the Magistrate with the new Landlord shall, upon the surrender of his existing Pass, be entitled to the issue of a new Pass with the endorsement of the period, if any, during which the Native is to render service to the Landlord."

The foregoing section is, or should be, a decided advantage to Landlords, but how many of them make use of this privilege? Few if any take advantage of this section because no doubt they argue that the native will destroy the Pass with such an endorsement and obtain a Renewal for the small fee of 1s., and such Renewal will in the majority of cases have no reference to the Landlord's right. Well, it is for the farmer to devise a better scheme, and with this end in view the writer wishes to make the following remarks:—

Where is the protection held out to farmers who engage natives not residing on their property? True it is that they may enter into Verbal and Written Contracts, which, if broken, entitle them to proceed under Act 40, 1894, but surely a similar security

to that extended to Landlords could be found for farmers generally. In this connection reference might be made to Section 10, Act 49, 1901, which states that every Pass Officer must satisfy himself that the native applying for the Pass is not engaged under any Contract of Service. This in itself is too much to expect of any official. If a native is a bad character and is determined to get a Pass he need only deny that he is in service and thereupon the Pass Officer cannot do otherwise than furnish applicant with a Pass. How then can the native be prevented from obtaining a Pass once he has entered into any Contract of Service? The only way, unless a better one is known, would be to make provision for the due registration of all Contracts by noting against the name of the native in the Identification Record Book the fact that such a native is engaged for a stipulated period, and consequently during that stipulated period the native would find it impossible to obtain work elsewhere. If this plan were carried out effectively the native would soon realise that he could not obtain work elsewhere, and even if he deserted, destroyed his Pass (which might also be endorsed), and applied elsewhere through another Magistracy for a Pass, reference would have to be made to the original office of issue, when it would at once be discovered that the native asking for the Renewal had not completed his contract with his last master. The matter could then be reported to the Police, who would find little difficulty in locating the delinquent.

It would be useless to put this plan into force if the farmer did not co-operate, and it should be made an offence if the farmer does not duly report the completion of a Contract to the Magistrate, who will thereupon delete the note in his Identification Record Book.

Furthermore, the provision of Section 2, Act 3, 1904, should be carried out, and a severe penalty should be inflicted upon anyone employing a native without a Pass; otherwise the above suggestion would be of little avail, even if carried out. Even at the present time many farmers employ natives not residing on their farms without enquiring whether they hold a Pass as provided for in Section 5, Act 49, 1901.

## NATIVE SQUATTERS.

Ordinance 2, 1850, deals with the above subject.

There are many farmers who have allowed natives to squat on their farms on condition that they render labour or pay rent, but as to the payment of rent no fresh contract can now be made in view of Act 27, 1913, which inflicts a fine of £100 upon any farmer who after the commencement of that Act enters into an agreement to hire land outside the scheduled areas to a native without first obtaining the permission required under Section 1 (1), Act 27, 1913.

What procedure should be adopted to effect the lawful ejection of any native who has previously had permission to reside on land and whom for some reason or other the farmer desires to remove? In other words, what notice must be given to a native to quit?

Again and again it has been decided that reasonable notice must be given to the native to allow him sufficient time to reap his crops, and reasonable notice depends entirely upon the circumstances of each case. It would be absurd to permit a native to sow his crops and then give him notice to take effect before he has had time to reap such crops. The most suitable time would be to give notice in January, to take effect at end of June, allowing the native six months, if a yearly tenant, to remove his crops and belongings. Of course the notice need not be for six months, and may be considerably less, but it is safer to err on the longer than the shorter period for notice.

Such notice must be in writing, as near as practicable, in the following form:—

#### NOTICE.

A..... B....., and other persons living in the same kraal, on the farm called....., are hereby ordered to remove therefrom on or before the.....day of ....., 19...(or forthwith as the case may be).

(Signature).....

Place.....

Date.....

The above Notice, of which it would be advisable to keep a copy, should be served in compliance with Section 8, Ordinance 2, 1855, which, *inter alia*, reads:—"It shall be sufficient to serve only one such notice on all the people of any kraal, by delivering a copy to any male inhabitant thereof, and informing him of the tenor of such notice."

Should the native fail to comply with the above notice, then the farmer should apply for a summons in terms of Ordinance 2, 1855, calling upon the native on a certain date to show cause why an ejection order should not be granted. On the date named the parties would appear before the Magistrate, who would then make such order as he deems fit.

The following cases decided by the Supreme Court give one an idea of what is deemed reasonable notice, and of other circumstances in these particular cases:—

*Sigenswana v. Tar*, 5 N.L.R., 135. If a native plants crops after notice to quit, he cannot claim to gather them.

*Nondwebu v. Nel and Botha*, N.L.R., 1901. On the hearing of a complaint to a Magistrate under Ordinance 2, 1855, evidence must be taken, and the procedure must be conducted in the ordinary form. Native tenants who have resided on private lands under a lease may, if the lease expires or becomes void through

any act or omission on their part, be removed therefrom under Ordinance 2, 1855.

Wood v. Maqaqa, N.L.R., 1909. A native having occupied a portion of plaintiff's farm for many years, and regarded as the landlord's Induna, was served with a written notice in March, 1908, ordering him to quit the farm on or before the 30th June of that year. Having failed to obey the notice he was sued in September, 1908, for damages and ejection, and judgment was given against him. On appeal principally on the ground that the appellant had not received sufficient notice to quit the farm, *Held*, that the native might in the circumstances be regarded as a yearly tenant, that notice given in March to expire on the 30th June was a reasonable notice, but the Court, having regard to the fact that the native had prior to the appeal proceedings again planted his crops, directed that the order for ejection should not be enforced before the 30th June next.

Natal Creamery, Ltd. v. Mahakana, N.L.R., 1912. A native tenant who had resided upon a farm for some time and had paid his rent up to the 30th June, 1911, was notified by the purchasers of the farm on the 9th July, 1912, that he must remove his kraal from the farm within thirty days from that date, but on his refusing to quit a summons was issued against him in the form of Schedule B., Ordinance 2, 1855. It appeared that although the complainants had purchased the farm on the 13th June, 1912, they had not at the date of the proceedings actually taken transfer thereof. The Magistrate having dismissed the application for ejection, on appeal, *Held*, that the plaintiffs, not having taken transfer of the farm, were not the legal owners, and were therefore not entitled to eject the native under Ordinance 2, 1855. *Held*, further, that as the respondent was a yearly tenant the notice to quit in 30 days was unreasonable.

Justice Circular No. 136, February, 1913. Simeon Ntuli v. Forrest. Lease, Ordinance No. 2 of 1855. *Held*, that the lessee of land with rights over a native tenant comes within the words of Section 3 of Ordinance No. 2 of 1855, *viz.*, "owner of any land, his representative or mandatory," and therefore the lessee is entitled to set in operation the Ordinance as the owner would have been entitled to do. *Held*, further, that the Ordinance covers the case of a native tenant under an agreement which has expired or become void "through any act or omission of the native," as these words in Section 2 only qualify the words immediately preceding "or become void," but not the word "expired."

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#### SCHEDULE "A."

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#### FORM OF CONTRACT OF SERVICE.

Act 40, 1894.

Be it remembered that on this.....day of.....  
in the Year of Our Lord 192 .., .....

(name of Master), of....., Natal, and.....  
 (name of Servant), of.....(take particulars from  
 Identification Pass) appeared before me....., and  
 in my presence signed their names (or made their marks, as the  
 case may be) to the following Contract:—

The said.....(name of Master) agrees to hire the  
 service of the said.....(name of Servant), and  
 the said.....(name of Servant) agrees to render to  
 the said.....(name of Master) his service at all  
 fair and reasonable times, in the capacity of.....  
 for.....(state period) commencing on the  
 .....day of.....192..., and termin-  
 ating on the.....day of....., 192...

And it is further agreed that the said.....  
 (name of Master) shall pay to the said.....  
 (name of Servant) as such servant aforesaid, wages after the rate  
 of.....by the.....(month), and  
 that such wages shall be paid monthly (or as the case may be).  
 Here add any special agreement compatible with the law and not  
 adverted to in this form.

The preceding agreement was signed by the above-named  
 parties, in my presence, on the day and year above written, volun-  
 tarily, the same being, as far as I am able to judge, understood by  
 them respectively.

.....  
 Magistrate.

The above form is obtainable at any Magistrate's Office free  
 of charge.

## MASTER AND SERVANTS (NATIVE) ACT, 1894.

### CHAPTER I.

#### ON THE FORMATION OF CONTRACTS, ETC.

##### *Duration of Contract in absence of Special Stipulation.*

5. Every contract of service, whether oral or written, the term  
 of endurance of which shall not have been expressly specified and  
 limited by such contract, shall, in the absence of sufficient proof  
 to the contrary, be deemed and taken to be for the term of one  
 month from the commencement thereof; save and except contracts  
 for service in any trade or handicraft, whereby it shall not have  
 been stipulated that the servant shall, during the term thereof,  
 reside in the house of or on the premises of the master, which shall  
 be deemed and taken to endure only until the night of Saturday  
 of the week on any day of which it shall have been stipulated that  
 the service shall commence; and contracts for executing any par-  
 ticular piece of work specified in the contract, which shall expire

so soon as the work is finished, and when the work is not finished within a reasonable time, may be put an end to by the master, after the lapse of a period of time reasonably sufficient for finishing such work.

*Validity of Oral Contracts; Requisites.*

6. No oral contract of service shall be valid or binding for any longer term than twelve months from the period fixed for the commencement of the service stipulated by such contract; and no such oral contract shall be valid or binding in any case, unless it be stipulated in such contract that the service thereby stipulated for shall be entered upon by the servant, within one month from the date of the contract.

*Validity of Written Contracts; Requisites.*

7. No written contract of service entered into in this Colony shall be valid or binding for a longer period than twelve months from the date thereof, nor shall any contract for service in writing be valid or binding in any case on any servant, unless the service so contracted for shall be stipulated to commence within the period of one month from the date of the contract, except the contract be signed with the name, or, in the case of illiterate persons, with the mark of the contracting parties, in the presence of a Magistrate or Justice of the Peace, who shall satisfy himself by enquiry of the servant that the contract was entered into by the parties voluntarily, and with a clear understanding of its meaning and effect, and shall then, and not till then, subscribe such written contract in attestation of that fact.

*Limit of Duration.*

8. No such contract so entered into before a Magistrate or Justice of the Peace shall be valid or binding for a longer period than thirty-six months from the date thereof.

*Form of Contract.*

9. All contracts of service entered into before a Magistrate or Justice of the Peace shall be drawn up as nearly as possible in the form of the Schedule of this Act.

*Determination: Notice.*

10. No contract of service for a month or any longer period shall be deemed and taken to have expired until at least one month's notice, calculated from, and inclusive of, the day of giving such notice, shall have been given by either of the parties to the other party, unless it shall have been expressly stipulated that no such notice shall be necessary; and when the service shall

be a weekly one, a week's notice shall be necessary: Provided that nothing herein contained shall be construed so as to enable any party to any contract of service to determine the same without the consent of the other party, before the expiration of the term of service originally agreed upon.

*Waiver of Notice.*

11. When any such notice as hereinbefore mentioned shall have been given by either of the parties to the other, and the master shall suffer the servant to remain, or the servant shall remain in his service after the day on which according to the notice given the contract of service should expire, such notice shall be deemed and taken to have been withdrawn and passed from, and the contract of service shall continue to endure as long, and in like manner, as if no such notice had been given unless it shall have been otherwise expressly and specially agreed between the parties.

*Food and Lodging.*

12. In all contracts, whether oral or written, by which it is stipulated that the servant shall reside on the premises of his master, and wherein it shall not be expressly provided that the master is not to supply food and lodging, the master shall be deemed and taken to have engaged to provide such servant, and such of his family (if any) as shall have been included in the contract, in manner hereinafter mentioned, with lodging and sufficient food of good and wholesome quality during the continuance of the contract.

*Rate of Wages.*

13. In case of any action for non-payment of wages, due and payable by virtue of any contract of service, being brought before any Magistrate, or other competent Court, by any servant, and when the rate of wages at which such contract was made shall not be proved to the satisfaction of such Magistrate or Court, such Magistrate or Court is hereby required to fix the rate of wages at that usually paid in the district or place in which the service for which the wages are claimed was performed, reference being had to the skill and ability of the servant, and to give decree accordingly.

*Payment in Money or Kind.*

14. No servant's wages, if contracted for in money, may be paid in kind, or if contracted for in kind, may be paid in money, or in any other than the stipulated kind, except by the express consent of the servant.

*Sickness of, or accident to Servant.*

15. When any servant shall, in consequence of any sickness or accident, be rendered incapable of performing his master's service, he shall not be entitled, in the absence of any special provision



in the contract, to receive his wages, except such as shall be already due: Provided, however, that the master shall be bound to provide such servant, if residing or being on his premises, with proper and sufficient food during such incapacity of the servant, for a period of two months, when he shall be at liberty to treat and consider the contract of service as determined and rescinded to all intents and purposes whatsoever.

*Hospital Fees.*

16. If any servant, being resident on his master's premises, shall be received therefrom into a hospital for the treatment of any sickness or accident, the master shall be bound to pay the hospital for the food supplied to such servant, at a rate not exceeding One Shilling a day. The liability of such master shall not extend beyond a period of two months: Provided, however, that nothing in this section shall be deemed to apply to any case of sickness or accident occasioned by the drunkenness or misconduct of a servant, but such servant if treated in a hospital for any sickness or accident so occasioned, shall be liable to pay for the cost of his maintenance and treatment therein, and to be sued for such payment. Amended by Act 12, 1908, the charges being altered to lowest daily rates charged by the hospital.

*Interment of Body of Servant within Borough or Township.*

17. See Act. This section requires the master to give the servant a decent burial if the body has not been claimed by the relatives within a reasonable time.

*Cost of Interment.*

18. The cost of such interment as aforesaid shall in the first instance be borne by the master of the deceased servant: Provided . . . . (see Act).

*Contracts for Services of Wife and Children.*

19. All contracts of service stipulating for the services of the wife of any servant, together with those of her husband, shall be made or executed by her in like manner as the same shall be made and executed by her said husband: And it shall be lawful for the father, or, in the event of his death or absence, then for the guardian of any child under the age of sixteen years, to contract for the service of such child, in like manner as such person may contract for his own services; and when such contract shall be in writing the name and age of every such child shall be clearly set forth and specified in the contract: Provided always, that nothing herein contained shall give to the master or any such parent any claim on the services of any such child beyond the period for which the parent shall be engaged, nor beyond the period when such child shall attain the age of sixteen, nor to the services of any other child of the contracting parent, whether under colour of such

last-mentioned child having been fed or clothed by the master, or having been born while the parent of such child was in the said master's service, or under any other pretence whatsoever.

*Death of Husband or Father.*

20. On the death of any person being at the time, together with his wife and any child, under contract as aforesaid, the contract shall become null and void, with respect to such wife and children, at the expiration of one month after the death of such person.

*Residence of Servant's Family on Master's Premises.*

21. It shall not be lawful for any person entering into any contract of service by which it is stipulated that the servant shall himself reside on the premises of the master, to keep his wife and children on the premises of his master, unless when the master shall have so stipulated in such contract that this shall and may be done: Provided that, when the master shall have so stipulated, it shall not be lawful for him to claim the services of any such wife or child by reason merely of their residence on his premises.

*Offences punishable by fine of £2, or Imprisonment for one month.*

26. Any servant may be fined any sum not exceeding Two Pounds Sterling, and in default of payment of the same may be imprisoned, with or without hard labour, for any period not exceeding one month, or may in the discretion of the Magistrate be imprisoned, with or without hard labour, for any period not exceeding one month, without the option of a fine, in case he shall be convicted of any of the following acts or instances of misconduct, that is to say:—

- (1) If he shall, after having entered into a contract, fail or refuse, without lawful cause, to commence the service at the stipulated time.
- (2) If he shall, without leave or other lawful cause, absent himself from his master's premises, or other place proper and appointed for the performance of his work.
- (3) If he shall unfit himself for the proper performance of his work, during working hours, by becoming or being intoxicated.
- (4) If he shall neglect to perform any work which it was his duty to have performed, or if he shall carelessly or improperly perform any work which, from its nature, it was his duty, under his contract, to have performed carefully and properly.
- (5) If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey.

- (6) If he shall make any brawl or disturbance in or at his master's dwelling-house, or on his master's farm, and after being by his master or any other person placed by his master in authority over him, desired to desist, shall, notwithstanding, continue making such brawl or disturbance.

*Offences punishable by fine of £3, or Imprisonment for two months.*

28. Any servant may be fined any sum not exceeding Three Pounds Sterling, and in default of payment may be imprisoned, with or without hard labour, for any period not exceeding two months, or may be imprisoned without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding two months, and during such imprisonment as in this section is mentioned, may be kept in solitary confinement with or without spare diet, or on spare diet with or without solitary confinement, in case he shall be convicted in any of the following acts or instances of misconduct, that is to say:—

- (1) If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.
- (2) If he shall by wilful breach of duty or by neglect of duty, or through drunkenness, refuse or omit to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master. But if it shall appear that such servant is able to pay the damage caused by such act or default as in this section aforesaid, it shall be competent for the Magistrate to proceed under the forty-fifth section of this Act.
- (3) If, being employed as a herdsman, he shall fail to report to his master the death or loss of any animals placed in his charge, which he shall allege to have died or been lost, on the earliest opportunity for so doing after he shall have discovered, or in the course of duty was bound to have discovered, such death or loss, or if he shall fail to preserve for his master's use or inspection any part or parts of any such animal as he shall allege to have died, which part or parts he shall by his master have been directed to preserve, unless such herdsman shall prove to the satisfaction of the Court the death of such animals, or if it shall be made by his master to appear that

any such animal or animals alleged by him to have strayed away or otherwise become irrecoverably lost, could not, under the circumstances of the case, have become irrecoverably lost without his act or default.

- (4) If, being employed in any capacity other than that of herdsman, he shall allege the loss of any property placed in his charge by or for his master, and it shall be made by his master to appear that the property in question could not have been lost without his act or default.
- (5) If he shall, without lawful cause, desert from his master's service.
- (6) If he shall use any abusive or insulting language to his master, or to his master's wife, or to any other person placed by his master in authority over him, calculated to provoke a breach of the peace.
- (7) If he shall, without leave, and for his own purposes, make use of any horse, vehicle, or other property belonging to his master.

*Effect of Fine or Imprisonment on Contract.*

30. No fine or period of imprisonment undergone under this Act by a servant shall have the effect of cancelling the contract of service, unless otherwise specially ordered by the Magistrate.

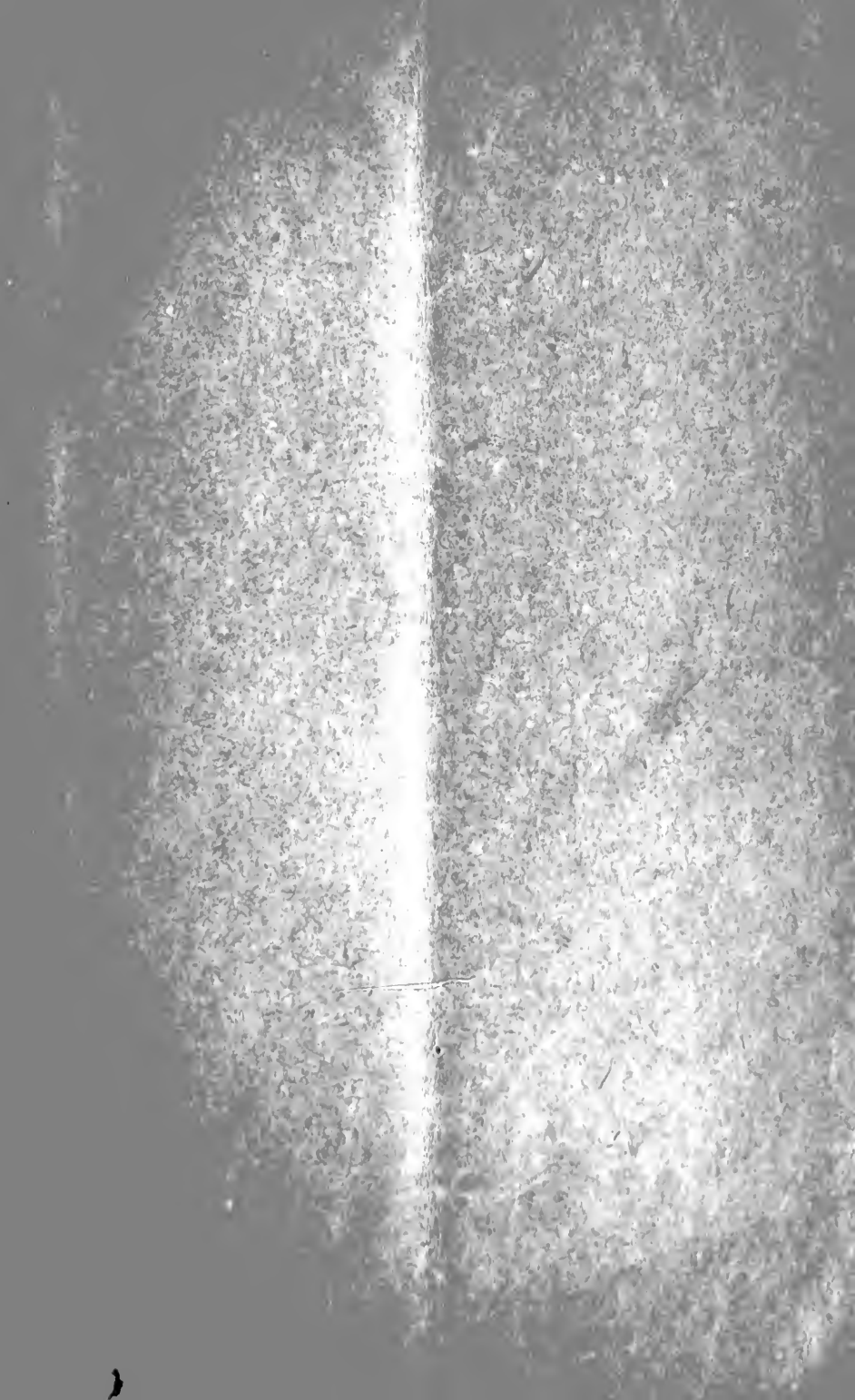
*Deduction of Fine from Wages.*

37. In any case where a servant shall be fined by a Magistrate and such fine shall be paid by the master, the sum so paid by the master may be deducted from the servant's wages.

ACT 50, 1901.

Section 1. Section 36 of Act 40, 1894, is hereby repealed, and the following section is enacted in lieu thereof:—

Any servant who shall be tried for an offence under this Act shall return to his master immediately after the trial, or, if sentenced to imprisonment immediately upon completion of his term of imprisonment, and if he shall not do so he shall be deemed guilty of the offence of being unlawfully absent from his master's premises within the meaning of Sub-section (2) of Section 26 of this Act, and he may be arrested by any constable and brought before the Magistrate and tried summarily, and it shall not be necessary in such a case for the master to lay a complaint or to appear in support of the charge, provided that it sufficiently appear by other evidence that such offence was committed.





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